

## Covid-19: Brazilian Perspective

Hermes Zaneti Jr., Professor, Federal University of Espírito Santo - Vitória / Brazil, email: [hermeszanetijr@gmail.com](mailto:hermeszanetijr@gmail.com).

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### General View of the Impacts in the Law

We are living in a period of disaster. This pandemic virus has spread and changed our present lives and certainly shall result in a new era, a new normal as has been said. Maintaining the stability of law is an important part of law in time of disasters.<sup>1</sup> In Brazil there is a real concern to maintain the stability and the applicability of the law during the pandemic.

The Federal Law 13.979 / 2020 is the general rule to fight against Covid-19 and organize our legal system. Also, many executive orders and MPs, a kind of statute of emergency issued by the President and confirmed by the Parliament have been issued.

The Brazilian Supreme Court already decided that is not possible for the government to decide public policies without allow control of information by the public sphere<sup>2</sup> and based on scientific evidence. That means judges can rule against measures decided by the government if they are not founded.<sup>3</sup>

### The Covid-19 Era in the Brazilian Judicial System

Brazil has more than 78 million cases pending in the judicial system. Impacts of the Covid-19 in the pending cases and in the judicialization of new cases are expected. Because of that, the judicial system started a general preparation for case management of the new cases regarding the pandemic spread of the 2019 novel coronavirus (SARS-CoV-2), establishing a new taxonomy in the national register for cases and incidents involving the subject<sup>4</sup> and general measures to avoid the lockdown of the judicial system, as resolutions 133 and 134 of the National Judiciary Council. Those same resolutions discipline the suspension of the deadlines of the procedures and that the online courts will restart on 4 May without any suspension.

To exemplify the use of the new taxonomy and its effects in the control of the caseload, the Supreme Court has already decided 941 times and have a caseload of 1 212 cases pending

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<sup>1</sup> GERRARD, Michael B. Emergency exemptions from environmental laws. In: PISTOR, Katharina. Law in the Time of Covid-19. Columbia Law School, 2020, p. 81.

<sup>2</sup> STF ADI 6.351, Justice Alexandre de Moraes, applying the constitutionality control in an act of the President.

<sup>3</sup> Just to illustrate, there are two ADPF, constitutional remedies, in the Supreme Court granted provisional measures by Justice Luís Roberto Barroso, and a class action interlocutory relief ruled by a Federal Judge, ordering the President Jair Bolsonaro's administration to suspend a campaign "Brazil Cannot Stop", that promotes the return to work, which was contrary to measures suggested by WHO and imposed by regional governors to contain the Covid-19 (<https://bit.ly/2VOtiEQ>; <https://bit.ly/2KnyyK7>).

<sup>4</sup> To access the panel of new action regarding the Covid-19 in the judicial system go to <https://bit.ly/2VLa4Qu>.

on the subject of Covid-19, including proceedings to control the constitutionality of the new statutes and executive orders, habeas corpus and interlocutory appeals, all registered in an electronic panel.<sup>5</sup>

Important decisions have been given such as the decision that recognizes simultaneous competence of states, municipalities and the Union in the fight against Covid-19<sup>6</sup>. It is important to notice that regardless of the possibility of judicial review there is a general posture of self-restraint and respect to the governmental strategies, only controlled when in contrast with the public health policies that have already been established.<sup>7</sup>

#### E-Process and Online Justice in Brazil

Brazil have e-processes in the Code of Civil Procedure<sup>8</sup> and in our law.<sup>9</sup> These are national rules and are applied to all federal and state courts. Several courts were already working with electronic proceedings before the Covid-19 crisis.

However, the geographical and political situation in Brazil means that we have very pronounced disparities in the justice system, including the distribution of financial resources, investment in infrastructure, personnel and technology.

The country has continental dimensions and very different realities. As an example, it is not the same thing to talk about online hearings (videoconference) and electronic processes in the Supreme Court (STF), in the São Paulo State Court and in the Espírito Santo State Court.

The STF is the most important Court with constitutional jurisdiction and is responsible for establishing precedents about the meaning of the Constitution that are binding for all other Courts. The Supreme Court has already adopted e-process and is very well organized in having enough material and personnel to facilitate a fast adaptation to this new era. During the interval between 03/12/2020 and 04/20/2020 more than 6.979 proceedings have been received, 9.270 cases concluded, 10.006 individual and 1.973 collective decisions have been made, demonstrating that the Court still worked in this period.<sup>10</sup>

On the other hand, São Paulo is one of the major Courts, if not the major, in South America, with hundreds of thousands of cases and one of the most complex judicial systems. Espírito Santo, is one of the smaller Courts. They worked as well, but with different results.

For instance, in my State, Espírito Santo, we were late in using online justice and e-process. There has only been a system of e-processes in small claims courts, interlocutory appeals, and enforcement of criminal final decisions.

Notwithstanding, the practice of electronic procedural acts is possible even in physical processes. That means that is possible to give decisions, and file suits and injunctions electronically. Because of that, even in the suspension time of deadlines in the proceedings,

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<sup>5</sup> To access the cases pending on the Supreme Court go to <https://bit.ly/2VNOzhW>.

<sup>6</sup> <https://bit.ly/3bqrkRu>.

<sup>7</sup> See the quoted decisions above and the Supreme Court decisions in the ADPFs N. 661 and N. 663 Justice Alexandre de Moraes allowing a special legislative proceeding during the pandemic.

<sup>8</sup> Law N. 13.115 / 2015. For the English version, see <https://bit.ly/2yRoZAN>.

<sup>9</sup> Law N. 11.419 / 2006 (<https://bit.ly/39WBIPh>).

<sup>10</sup> <https://bit.ly/2xEYxu5>.

judges continue to decide pending cases that were already ready (mature for decision), even if the deadlines for appeals and procedural acts in general are suspended across the country. The Resolution N. 314 of the National Justice Council is recommending the digitalization of the processes and the passage to the e-process whenever possible.

### Law Schools and Doctrine

Law classes have been suspended in most of the public law schools. The private sector instead is moving quickly to online teaching, and many faculties of law are now having classes online with professors struggling with this new trend. Probably, for the time being even the public law schools will convert to online teaching and it is very feasible that this tendency will stand after the end of the crisis.

Online books, articles and interventions are being published every day. In a country with more than 1.1 million lawyers registered at the bar and more than 1 thousand law schools, the contribution of the doctrine discusses the actual impacts in the current life of law and the future of the law after Covid-19. The main fields of interest are contracts, corruption control, bankruptcy law, frivolous individual and class actions and the conversion to online justice and e-process. As a last but not the least observation, the doctrine must remain vigilant and critical to prevent the use of precedents and controversial decisions from being based solely on the consequentialist economic argument of the impact of the virus.<sup>11</sup>

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<sup>11</sup> In a recent decision Justice Alexandre de Moraes suspended indefinitely all class actions with an impact throughout the national territory to discuss the territorial limits of the decisions, a procedural issue.